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In the Supreme Court of the United States

OCTOBER TERM, 1968

NO. [redacted] 28

UNITED STATES OF AMERICA,

Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, et al.,

Appellees.

On Appeal from the United States District Court for the District of Columbia

MOTION OF THE PUBLIC UTILITY COMMISSIONER OF OREGON TO AFFIRM

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MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the rules of this Court, the Public Utility Commissioner of Oregon moves that the judgment of the District Court be affirmed on the ground that it is manifest that the question on which the decision of this appeal depends is so unsubstantial as not to need further argument.

STATEMENT

This is a direct appeal from a final judgment of a unanimous three-judge District Court upholding an

Order of the Interstate Commerce Commission approving the application of the Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and certain of their subsidiary companies to merge subject to certain conditions.

Oregon intervened originally in opposition to the merger. Our concern was with preserving keen intramodal railroad competition for the movement of agricultural and forest products. Oregon in addition actively supported the conditions proposed by the Chicago, Milwaukee, St. Paul and Pacific Railroad, including entry into Portland, Oregon, on a competitive basis.

The applicant railroads before the Commission asked for reconsideration. At the time of reconsideration the applicants were willing to accept the conditions that the Milwaukee and other railroads proposed, including Milwaukee entry into Portland, Oregon, on a competitive basis. This agency then withdrew its opposition to the merger (see J.S. App. 268) and in a letter to the Commission dated August 1, 1966, explained the reasons for this agency's change of position, as follows:

> "Entry of the Milwaukee to Portland will strengthen rail competition, improve the supply of rail cars, and make that railroad an active competitor for transcontinental traffic from or to Oregon, as well as offering the public additional through routes between California and the Pacific Northwest. The opening of additional gateways with the Milwaukee and Northwestern will provide routes presently closed to our shippers. The Central Oregon (Bieber) route, and the Klamath Falls gateway will be greatly

strengthened. Elimination of dual switching charges has long been needed and will be a real benefit for the area. New job security agreements for GNP&B employees, together with the advent of new Milwaukee Railroad employees will tend to reduce the feared loss of payroll. The strengthened financial position of the merged GNP&B line could be highly significant to Oregon's future in both the long and short run."

ARGUMENT

Consummation of the merger will result in effective railroad competition to the new company at all major stations in Oregon, Washington and Northern Idaho. It will strengthen railroad competition in this area rather than weaken it. The SP&S lines as a part of the merged company will become a more effective competitor against the Southern Pacific Company lines in Western Oregon. Milwaukee entry into Portland will open up new rates, services and car supply to Oregon shippers on both transcontinental traffic and traffic between Oregon and Washington or California. The Milwaukee for the first time will have a direct connection to SP at Portland. Development of the Klamath Falls interchange between SP and GN will benefit Central Oregon shippers. It will also provide a shorter route between California and Idaho and Montana. Northern Pacific's participation in traffic moving over Bieber, California, will strengthen Western Pacific Railroad.

The position of the Milwaukee as a competitive railroad would be substantially strengthened under the

conditions imposed by the Commission's Order[6], as the District Court held:

> "The evidence gives substantial support to the conclusion of enhanced competition by Milwaukee, with traffic diversions to it from the merged lines. * * * Milwaukee, by no means a negligible competitor previously, will become for the first time a much strengthened competitor, realistically vying for long haul traffic at every major point served by Northern Lines."

The opening of new gateways between Milwaukee and the GN at Spokane, Tacoma and Seattle[7] will give Oregon shippers access to new markets and additional points at which transit service can be performed under through rates. T he agreement between the GN and NP and Milwaukee specifically provides that transcontinental traffic will be interchanged at these gateways at the same level of joint rates as presently apply on traffic interchanged between the Milwaukee and GN or NP at Minneapolis-St. Paul or Sioux City, Iowa[8]. Joint rates will also be applicable between the Milwaukee and GN and NP lines at Spokane, Seattle and Tacoma on local traffic moving within the Pacific Northwest. Under the merger Oregon shippers would definitely gain in the establishment of through routes and joint rates presently closed to them. They would also definitely gain from the additional service available to them over the Milwaukee.

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[6] J.S. App. 438-456 Conditions
[7] J.S. App. 499-50 Condition 23
[8] J.S. App. 499-50 Condition 23

CONCLUSION

The merger approved by the Order will be of substantial benefit to the public, especially to shippers in Oregon. It will strengthen railroad competition in the area.

The District Court was clearly correct in affirming the Commission's Order, and its judgment should be affirmed without further argument.

Respectfully submitted,

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